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Table Of Content

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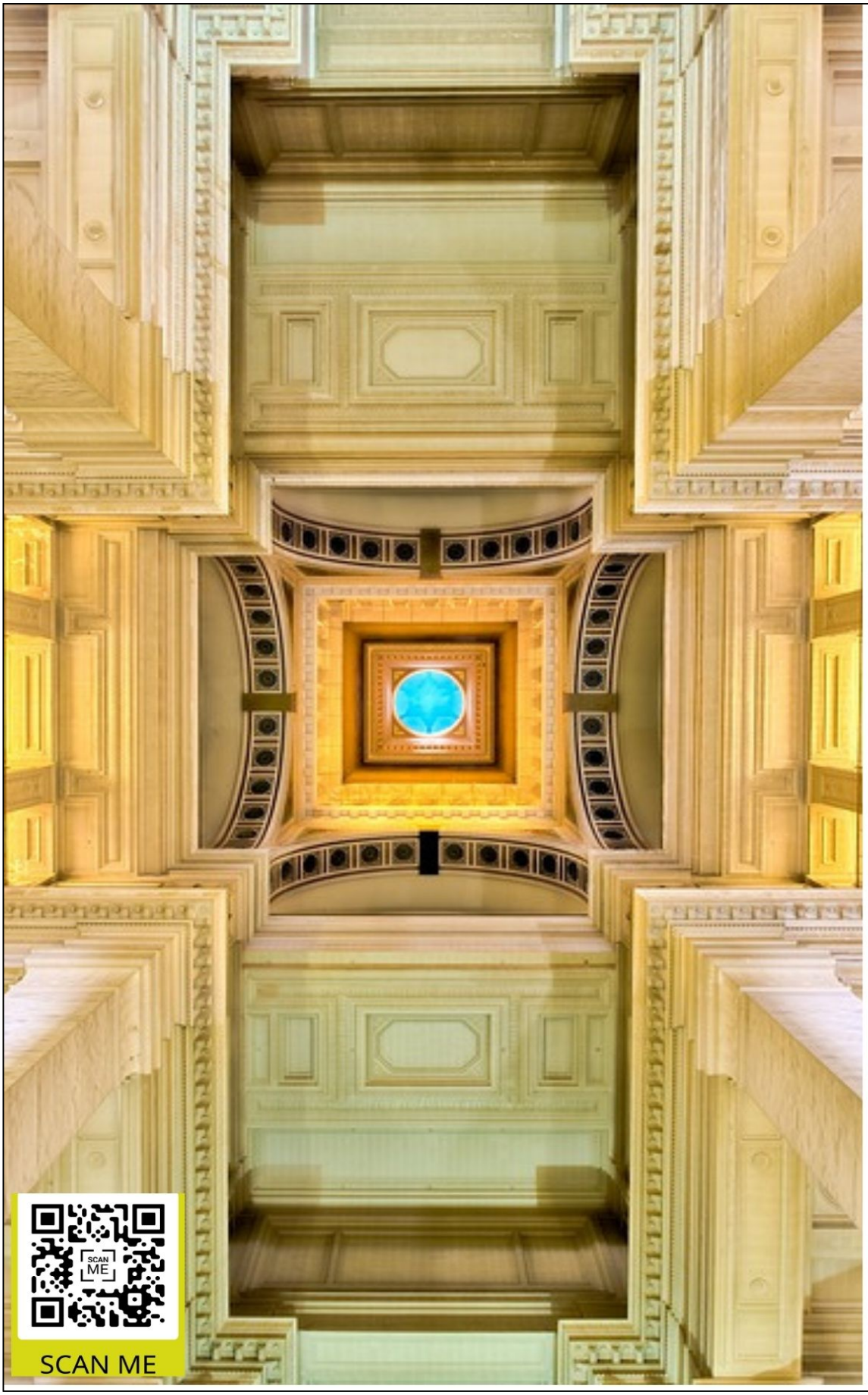

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A Review on Administrative Justice Competencies in France

Telaah Kompetensi Absolut Peradilan Administrasi di Perancis

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Abstract

The Indonesian justice system is closer to the French justice system, both general and administrative justice, with its "droits administrative regime". In addition, it is recognized that administrative justice in France is already well-established, so it has become a model for other countries. Therefore, the author tries to conduct normative legal research related to the Absolute Competence of Administrative Justice in France. This is certainly very different from the results of previous research and writings that examine the Study of State Administrative Courts based on the paradigm of Law Number 30 Year 2014 on Government Administration then research on the Absolute Study of State Administrative Courts in the Assessment of the Abuse of Authority, there is also research on Implications of Limiting the Absolute Competence of State Administrative Court, Reformulation of Unlawful Acts by Government Agencies or Officials in the Context of Absolute Competence in State Administrative Court and the Element of Abusing Authority in Corruption Crimes as Absolute Competence of Administrative Justice. The entire previous article is examining the Absolute Competence of Administrative Justice in Indonesia alone and its development while this paper contains the novelty of the elements that examine the history of law relating to the Absolute Competence of Administrative Justice in France. The conclusion is that France adheres to the dualite de la jurisdiction or duality of jurisdiction system. Administrative justice aims and ends at Conseil d'Etat besides general court comes from and aims at the Cour de Cassation (Supreme Court).

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Introduction

The term "Governance Law" was first used in the Gajah Mada University curriculum and later also by Airlangga University, Surabaya. The Faculty of Law, Sriwijaya University uses the term "State Administrative Law / State Administrative Law." Whereas in the Minimum Curriculum guidelines as stipulated by SK. Minister of P and K No. 0198 / U / 1972 dated December 30, 1972, the official designation used is Governance Law. Furthermore, in the Basic Law on Judicial Power (Law Number 14 of 1970) which has now been replaced by Law Number 4 of 2004 where it is stated that one of the judicial environments is the State Administrative Court Environment. According to the opinion of several experts such as Utrecht, Rochmat Soemitro, Van Vollenhoven and Ridwan HR, the term State Administrative Law is the same as State Administrative Law. Where there are legal rules governing government actions in exercising its authority so that with this authority the government can take various actions to carry out the interests of the community without acting arbitrarily.[1]

Written in article 1 Number 10 Law Number 51 Year 2009 the definition of State Administrative Dispute is a dispute that arises in the field of state administration between a person or civil legal entity and a state administrative body or official, both at the central and regional levels as a result of the issuance of state administrative decisions, including personnel disputes based on the prevailing laws and regulations. So it can be concluded that the State Administrative Decree is a Conditio Sine Quanon for the emergence of disputes in the field of State Administration. Article 1 Number 3 of Law 5 of 1986 as amended by Article 1 Number 9 of Law Number 51 of 2009 states that State Enterprises is a written stipulation issued by state administrative bodies or officials containing state administrative legal actions containing administrative legal actions based on concrete, individual and final laws and regulations which result in legal consequences for a person or entity civil law.[2]

Based on the description, the State Administrative Court contains certain elements to determine whether the decision of a certain organ of government is the absolute competence of an administrative court or not. There are at least 5 (five) views regarding elements of state administrative decisions according to several figures, namely Philipus M.Hadjon, Paulus E. Lotulung, B. Lopa & A. Hamzah, Indroharto and Wicipto Setiadi which presumably correspond to the totality of PTUN content, namely written determination, by the body or TUN officials, containing TUN legal actions, are concrete, individual, final, and have legal consequences for a person or civil legal entity.[3]

The Indonesian judicial system is closer to the French justice system, both general and administrative courts, with its “droits administrative regime”.[4]

Apart from that, it is recognized that the administrative judiciary in France is already well established so that many have become a model for other countries. Therefore, the author tries to conduct normative legal research related to the A Review on Administrative Justice Competencies in France.

Methods

The research method is basically a series of stepwise procedures or systematic methods used to find the truth in a scientific work, in this case, journal writing, so that it can produce a quality journal, namely a journal that meets the research requirements. Law in its broad meaning and its relation to people's lives, is basically built on the framework of scientific knowledge (science). In-depth study of law is a science, it can be read in detail in the book Reflections on Law by JJH Bruggink which is translated by Arif Sidarta.[5]

The type of research in this journal is normative legal research that places law as a norm system building. The norm system in question is about the principles, norms, rules of legislation, court decisions, agreements and doctrines (teachings). Soerjono Soekamto and Sri Mamudi gave an opinion that normative legal research is legal research conducted by examining literature (secondary data) which includes research on legal principles, legal systematics, vertical and horizontal synchronization rates, legal comparisons and legal history.[6]

Sutandyo Wigyosubroto provides the term "normative legal research with the term doctrinal research, namely research on law that is conceptualized and developed on the basis of the doctrine adopted by the conceptor or the developer.[7]

In this normative legal research using a statutory approach (Statute Approach). This means that researchers use statutory regulations as the initial basis for analyzing the formulated problem. The laws and regulations in question are Law 5 of 1986, Law 9 of 2004 and Law 51 of 2009[8]

This paper uses secondary data, namely:[9]

1. Primary Legal Materials are binding legal materials[10]such as Law 5 of 1986, Law 9 of 2004 and Law 51 of 2009
2. Secondary Legal Materials which provide an explanation of primary legal materials, such as research results, or the opinions of legal experts.

3. Tertiary Legal Materials which provide guidance and explanation of primary and secondary legal materials such as dictionaries and encyclopedias.[11]

As for other materials that are the object of research are Books and Legislation on State Administrative Law, State Administrative Court Law, Capita Selecta of State Administrative Law and Legal Research Methods. In addition to complementing data and information, it is also necessary for the author to interview parties related to the theme. writing this journal

Result and Discussion

In this paper the author examines normatively about the Absolute Competence of Administrative Courts in France, which is because the Indonesian judicial system is closer to the French justice system with its "droits administrative regime". Because it is recognized that the administrative judiciary in France is well established, it has become a model for other countries. This is of course very different from the results of previous research and writings that examine the State Administrative Court Study based on the paradigm of Law Number 30 of 2014 concerning Government Administration then research on the Absolute Study of State Administrative Courts in the Assessment of the Elements of Authority Abuse, there is also research on Implications of Limiting Absolute Competence of State Administrative Courts, Reformulation of Unlawful Acts by Government Agencies or Officials in the Context of Absolute Competence of State Administrative Courts and Elements of Abusing Authority in Corruption Crime as Absolute Competence of Administrative Courts. The entire previous article is examining the Absolute Competence of Administrative Courts in Indonesia and its development, while this paper contains the novelty of elements that examine the history of law related to the Absolute Competence of Administrative Courts in France.

The development of Droits Administration in France has a special style that is different from that in other countries. Since the beginning, State Administrative Law emerged and experienced its own development apart from the Droits Constitutionel. State Administrative Law is directly based on decisions on everyday state equipment, which means that it arises and develops based on state practice. This is different from Constitutional Law which is based on the provisions contained in the constitution (UUD). But of course, there are mutual influences between the two. With the separation between the two fields of law, the writer in France who wrote about State Administrative Law (De Gerando, for example) in his writing did not disclose the relationship between the Droits Administratief and the Droits Constitutionel. Likewise, those who write on Droits Constitutionnel such as Maurice Duverger, George Burdeau and others in their respective books do not pay attention to the issue of State Administrative Law (Droits Administratief).

France adopts a system of dualite de la jurisdiction or duality of jurisdiction, namely the separation of the organizational structure of the administrative justice (tribunal de l'ordre administrative or jurisdiction administrarive) and general court (tribunal de l'ordre judiciaire or jurisdiction judiciare). Administrative justice aims at and ends at the Conseil d'Etat. In addition, general justice originates and aims at the Cour de Cassation (Supreme Court). If there is a dispute over the authority to judge between the two courts it is resolved by the Tribunal des Conflict.

Administrative Judiciary consists of a Conseil d'etat at the central level, an administrative tribunal at the regional level and a special administrative judiciary body.[12] According to Ismail Sunny's opinion regarding the reasons for the holding of administrative courts, the first is because the Declaration des Droits de l'homme et du citoyen of 1789 stated that "without separation, there would be no constitution". In order to maintain this separation, it is practical that ordinary courts should not interfere in executive matters. The two ordinary courts do not hear and do not press administrative orders. They cannot, as in the UK, order or stop acts of employees, or correct or indemnify acts of general administration. The patron in this case is the administrative court. Finally, in ordinary courts there is no difference between civil judges and criminal judges, judges act in both types of cases. This is good for the prosecutor.[13]

Conseil d 'Etat as the pinnacle of administrative justice acts as a judge at the first and last level to examine certain cases, an appellate judge against decisions of administrative courts (administrative tribunals) and an appeal judge against decisions of special judicial bodies. Conseil d 'Etat has the authority to examine administrative disputes directly at the first and last levels, for a number of matters that have been determined limitatively by law as follows:

1. An application for annulment which is intended to oppose a decree or against the legislative deeds of the ministers (meaning a decision of a general nature, which is not only for one or a few persons)
2. Disputes relating to the position of officials and civil servants and military personnel of the state, which are appointed by decree of the president of the republic.
3. Applications for cancellation directed against certificates, which do not fall under the jurisdiction of one administrative court only.
4. Disputes concerning administrative order that arise outside the jurisdiction of the administrative court.[14]

In addition, the Conseil d'Etat is also authorized to examine what constitutes a loss to the people caused by a government agency. Even in the book Guide Pratique de la justice, Ministere de la Justice, Paris, it is explained that

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“Tout dommage entraine par l'activite de l'administration peut etre repare par une jurisdiction administrative, par exemple, sivos etes victime d'une chute due au mauvais entretien de la voirie. " (All types of damage caused by a loss by a government agency can be requested for repair or compensation through the Administrative Court, for example a person who falls and suffers (victim) due to poor maintenance of road facilities).[15]

Many administrative activities are carried out by the state in a civil contract (private - contract), in the form of private companies, such as companies that have been nationalized for economic production and commercial operations. In this case, a civil contract is used to regulate the relationship between producer - administrators and their clients. However, the Conseil d'Etat still has the jurisdiction to examine it. It can be said that administrative disputes are not the only disputes that Conseil d'Etat has handled.

There is a term administrative tribunal which is a court of first instance for administrative disputes in a general sense, amounting to 29 of which 25 are located in metropolitan areas and 4 are in overseas areas.[16] Administrative tribunal jurisdictions generally cover several regional government areas (which are called Departments)[17] The cases decided by the administrative tribunal mostly concern taxes, public works, housing, development plans, pensions, agriculture, expropriation of property rights, public health, education and elections.

The matters that are judged by the administrative tribunal are all decisions or decrees issued by the state, province, commune (district). Public institutions are either issued individually or collectively, for example, refusal of building permits, or mayor decrees regarding the prohibition of holding public meetings. All types of damage caused by an activity of a government agency can be requested for repair or compensation through an administrative tribunal, for example a person who becomes a victim (injury) due to a fall due to poor maintenance of road facilities. In addition, even passive government actions can be sued through the tribunal administrative. For example, a municipality is sued because of its negligence in not cutting down a tree because of its old age, the local government was sued and demanded compensation for causing injury or fatal consequences, as a result of falling a person into a hole in the middle of a street sidewalk.[18] The scope of the scope of the administrative tribunal authority in France this is driven by the principle that all settlement must be completed through legal means to obtain legal certainty. Power should not be used as a means of winning a case. In the process of litigation in administrative courts, the applied material law is not based on codified law, but on jurisprudence, so that jurisprudence has a very important role in practice.

Apart from the administrative tribunal, in France there are also special administrative judiciary bodies which have the authority to examine at the first level and the level of appeal (appel), while the cassation is submitted to the Conseil d'Etat.[9] These special administrative judicial bodies include:

1. Cour de Comptes, which checks state finances run by treasurers.
2. Cour de discipline budgetaire et financiere, which checks budget expenditure orders by the competent authority.
3. Conseil Universitaires which resolve disputes regarding government policies in the field of education.
4. Commissions et Coencils de l'aide sociale, which resolve disputes regarding requests for social assistance and various claims regarding the application of the social assistance law.
5. Jurisdiction des pensions militaires, which resolve disputes over retirement benefits for the military.
6. Jurisdictions des dommage de guere, which resolve disputes over compensation due to war.
7. Jurisdictions professionales, which resolve disputes regarding disciplinary action against several types of professions such as lawyers, notaries and doctors.[20]

Furthermore, the general court consists of La Cour de Cassation (Supreme Court), La Cours d'Appel (high court), Les Jurisdictions de droits Commun (general court) and Les Jurisdictions d'Exceptions (special courts) . While the type of administrative dispute which are the competences of general courts are:

1. Disputes arising from government duties in industry and trade
2. Compensation caused by accidents by government official vehicles
3. Government responsibility in education and universities.
4. Compensation due to revocation of title
5. Actions by the government that can harm individual property rights or basic freedoms, which are generally referred to as "voie de fait"theories or doctrines.

The Tribunal des Conflicts in resolving disputes on the authority to judge consists of 3 justices from the Cour de Cassation (Supreme Court), 3 members of the Conseil d'Etat and 2 replacement members each from the Cour de Cassation and the Conseil d'Etat.

The chairmanship of the trial is left to the Minister of Justice, but in practice it is left to a deputy chairperson who is elected from among the members of the Tribunal des Conflicts. The Minister of Justice rarely leads hearings, except in very important matters. Judging from the composition of such personnel, the Tribunal des Conflict is a joint court.

Tribunal de l’Ordre Administratif(Administrative Court)	Tribunal de l’Ordre Judiciaire(General Court)
Special Administrative CourtTribunal	Les Jurisdictions d’Exeptions Les Jurisdictions de droits

AdministratifConseil d'Etat	Commun La Cour d' Appel La Cour de Cassation
Tribunal des Conflicts	

Table 1. *Duality of Jurisdiction System in France [21]*

Based on the Table 1, it can be seen that the benchmarks for determining the absolute competence of Administrative Courts in France are outlined in general,[22] namely public law so that it covers all government actions, both legal and factual acts, except those expressly determined by law and jurisprudence becomes another judicial competence.

Conclusion

France adheres to a system of dualite de la jurisdiction or duality of jurisdiction, namely the separation of the organizational structure of the administrative justice (tribunal de l'ordre administrative or jurisdiction administrarive) and general court (tribunal de l'ordre judiciaire or jurisdiction judiciare). Administrative justice aims at and ends at the Conseil d'Etat. In addition, general justice originates and aims at the Cour de Cassation (Supreme Court). Administrative Courts consist of a Conseil d'etat at the central level, an administrative tribunal at the regional level and a special administrative judiciary body. In addition to the administrative tribunal, in France there is also a special administrative judiciary body that has the authority to examine at the first level and the level of appeal (appel), while the cassation is submitted to the Counseil d'Etat in addition to special administrative judicial bodies including the Cour de Comptes, Cour de discipline budgetaire. et financiere, Counseil Universitaires, Commissions et Coencils de l'aide sociale, Jurisdiction des pensions militaires, Jurisdictions des dommage de guere and Jurisdictions professionales. So the benchmarks for determining the absolute competence of Administrative Courts in France are outlined in general (general), namely public law so that it covers all government actions, both legal and factual acts, except those expressly determined by law and jurisprudence to become competences of other courts.

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